

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTOPHER JAMES DONKERS,

Plaintiff-Appellant,

v

WAYNE COUNTY CLERK,

Defendant-Appellee.

UNPUBLISHED
February 28, 2006

No. 263971
Wayne Circuit Court
LC No. 04-437932-AW

Before: Hoekstra, P.J., and Neff and Owens, JJ.

PER CURIAM.

In this action for mandamus and declaratory relief, plaintiff appeals as of right the trial court's orders setting aside a default and granting summary disposition in favor of defendant. We affirm.

This case arises from alleged inaccuracies in the register of actions kept by defendant, as clerk of the Wayne Circuit Court, in a separate divorce action to which plaintiff is a party. In his petition for mandamus and declaratory relief, plaintiff asserted that he had unsuccessfully sought to have the inaccuracies addressed by defendant, and requested that the trial court declare his right to an accurate register of actions and order defendant to correct or otherwise address the docketing errors alleged by plaintiff in his petition. When defendant failed to respond to the petition within the time set forth in MCR 2.108(A)(1), a default was entered against it for failure to timely respond. See MCR 2.603(A)(1).

Alleging that a response to plaintiff's petition was prepared but inadvertently not filed, defendant opposed plaintiff's subsequent motion for entry of a default judgment and moved for summary disposition in its favor pursuant to MCR 2.116(C)(8). The trial court, after setting aside the default, granted defendant's motion.

I

Plaintiff first asserts that, because defendant failed to submit an affidavit of meritorious defense in accordance with MCR 2.603(D)(1), the trial court erred in setting aside the default entered against defendant. We disagree. This Court reviews a trial court's decision whether to set aside a default for an abuse of discretion. *Barclay v Crown Building & Development, Inc.*, 241 Mich App 639, 651; 617 NW2d 373 (2000).

Plaintiff is correct that a motion to set aside a default under MCR 2.603(D)(1) may be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed. See *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 229; 600 NW2d 638 (1999). However, as recognized by the trial court, a default may also be set aside under the standards for relief from judgment set forth in MCR 2.612. *Id.* at 234 n 7; see also MCR 2.603(D)(3). Under MCR 2.612(C)(1)(f), a default may be set aside for any reason generally justifying relief from judgment. Although relief under this “catchall” provision is generally afforded only where a default ““was obtained by the improper conduct of the party in whose favor it was rendered, or resulted from the excusable default of the party against whom it was directed,”” *Kaleal v Kaleal*, 73 Mich App 181, 189; 250 NW2d 799 (1977), quoting 3 Honigman & Hawkins, Michigan Court Rules Annotated (2d ed), p 189, this Court has recognized that the broad equitable power afforded a trial court under MCR 2.612(C)(1)(f) permits the court to grant relief “whenever such action is appropriate to accomplish justice,” *Heugel v Heugel*, 237 Mich App 471, 480-481; 603 NW2d 121 (1999) (citations and internal quotation marks omitted). Because we conclude that justice would not be served by ordering amendment of a register of actions not yet shown to be inaccurate, we do not find the trial court’s decision to set aside the default at issue here to be an abuse of the broad discretion afforded the court in that matter. See *Alken-Ziegler, supra* at 227.

II

Plaintiff next argues that the trial court erred in failing to grant his motion to strike defendant’s motion for summary disposition. Again, we disagree. This Court reviews a trial court’s decision on a motion to strike for an abuse of discretion. *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 469; 666 NW2d 271 (2003).

Plaintiff correctly points out that because notice of a properly entered default was sent to defendant, defendant could not proceed with its case until the default was set aside. MCR 2.603(A)(3); see also *Coleman v Barr*, 120 Mich App 264, 266; 327 NW2d 464 (1982). However, because the trial court set aside the default before considering the parties’ motions to strike and for summary disposition, defendant was free to move forward with its motion for summary disposition. MCR 2.603(A). The trial court did not, therefore, abuse its discretion in failing to grant plaintiff’s motion to strike defendant’s motion for summary disposition.

III

Finally, plaintiff argues that the trial court erred in granting defendant’s motion for summary disposition. We again disagree. This Court reviews a trial court’s decision to grant or deny summary disposition de novo. *Badiee v Brighton Area Schools*, 265 Mich App 343, 351; 695 NW2d 521 (2005). A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim and should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Jackson v Detroit Police Chief*, 201 Mich App 173, 174; 506 NW2d 251 (1993).

As previously noted, the suit for mandamus and declaratory relief brought by plaintiff sought to compel correction of alleged inaccuracies in the register of actions maintained by defendant as clerk of the Wayne Circuit Court. However, while plaintiff is correct that defendant has a duty to maintain an accurate register of actions, see MCR 8.119(D), it is well settled that

mandamus is an extraordinary remedy that is proper only where “no other remedy exists, legal or equitable, that might achieve the same result.” *Lickfeldt v Dep’t of Corrections*, 247 Mich App 299, 302; 636 NW2d 272 (2001). As recognized by the trial court, MCR 2.612(A)(1) affords a party the right to seek, by way of motion, correction of “mistakes in judgments, orders, or other parts of the record” Indeed, “[t]he [very] purpose of this subrule is to make the . . . record reflect accurately what was done and decided.” 3 Dean & Longhofer, Michigan Court Rules Practice (4th ed), § 2612.5, p 471. Thus, because plaintiff had an adequate remedy at law, i.e., a motion to correct the alleged docketing errors before the court hearing his divorce action, a separate action for mandamus was not proper. *Lickfeldt, supra*. Summary disposition under MCR 2.116(C)(8) was therefore appropriate.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Janet T. Neff

/s/ Donald S. Owens